

JUL 31 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

SALVADOR IBANEZ BUENO; MARIA
DEL RAYO GUZMAN MARTINEZ,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-73778

Agency Nos. A75-771-565
A75-771-566

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006 ^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Salvador Ibanez Bueno and Maria Del Rayo Guzman Martinez, husband
and wife, natives and citizens of Mexico, petition pro se for review of the Board of
Immigration Appeals' ("BIA") order denying their motion to reopen removal

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

proceedings. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. We review de novo claims of due process violations in immigration proceedings. *See Sanchez-Cruz v. INS*, 255 F.3d 775, 779 (9th Cir. 2001). We dismiss in part and deny in part the petition for review.

The evidence Petitioners presented with their motion to reopen concerned the same basic hardship grounds as their application for cancellation of removal. *See Fernandez v. Gonzales*, 439 F.3d 592, 602-03 (9th Cir. 2006). We therefore lack jurisdiction to review the BIA's discretionary determination that the evidence was insufficient to establish a prima facie case of hardship. *See id.* at 601 (holding that if "the BIA determines that a motion to reopen proceedings in which there has already been an unreviewable discretionary determination concerning a statutory prerequisite to relief does not make out a prima facie case for that relief," 8 U.S.C. § 1252(a)(2)(B)(i) bars this court from revisiting the merits).

Our conclusion that we lack jurisdiction to review the BIA's determination that Petitioners did not make out a prima facie case of hardship forecloses Petitioners' argument that the BIA denied them due process by failing to adequately explain its reasons for denying the motion to reopen. *Id.* at 603-04.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.